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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/602,055	06/24/2003	Fred Harrison	9052.01	7631
7590	10/05/2004		EXAMINER	
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215			ROANE, AARON F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/602,055

Applicant(s)

HARRISON, FRED

Examiner

Aaron Roane

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 21 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al (USPN 5,656,019) in view of Herbranson (USPN 5,848,981) in further view of Lake (USPN 4,033,342).

Regarding claims 1 and 4, Cook et al. disclose an apparatus for applying therapy to a person, comprising, at least one elongated flexible member (20, 22, 24 and 26), and a plurality of spherical objects (12, 14, 16 and 18) connected to each other by means of the at least one elongated flexible member, said plurality of spherical including two end spherical objects (16 and 18) each of the end spherical objects of a unitary body with a single blind hole defined therein wherein the at least one elongated flexible member is secured within the blind hole of each of the end spherical objects, wherein the spherical objects are capable of storing heat energy, whereby the distribution of the plurality of

spherical objects permit self-application of the spherical objects about a desired area of a person's body wherein the at least one elongated flexible member is sufficiently stiff to keep the spherical objects in place about the desired area of the person's body, see col. 1-4 and figures 1-4. Cook et al. fail to disclose that stones are used for the spherical objects and are silent as to the blind holes. Additionally, Cook et al. fail to disclose end spherical objects each of the end stones consisting of a unitary body having two adjacent blind holes defined therein wherein the at least two segments of the elongated flexible member are secured within the two adjacent blind holes of each of the end spherical objects. It is public knowledge that thermal therapy can be combined with massage to enhance therapeutic effect. Hebranson disclose a thermal therapeutic device and teach the use of stones (49) in order to serve a thermal energy transfer agents, see col. 1-8 and figures 6-10. Lake discloses a therapeutic device comprising an elongate flexible member (2) and two spheroidal/ellipsoidal objects attached the two ends of the elongate flexible member by blind holes in order to secure to spheroidal/ellipsoidal objects to the elongate flexible member, see col. 1-4 and figures 1-5. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Cook et al., as is well known and taught by Hebranson to use of stones in order to serve a thermal energy transfer agents, and as further taught by Lake, to attach the two end spherical objects to the ends of the elongate flexible member by blind holes in order to secure to spheroidal/ellipsoidal objects to the elongate flexible member. Furthermore, at the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use a single flexible elongate member because Applicant has

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not disclosed that providing each end stone with two adjacent blind holes having inserted therein two segments of the flexible elongate member provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a single blind hole having a single flexible elongate member inserted therein because both configurations offer the necessary and sufficient flexibility and rigidity. Finally, pending a statement of criticality, the recited two adjacent blind hole/two elongate flexible member configuration is considered to be an obvious design choice over the configuration of Cook et al. in view of Hebranson and in further view of Lake and not patentably distinct thereover.

Regarding claim 2, Cook et al. in view of Hebranson and in further view of Lake are silent as to whether or not natural river stones are used. However, at the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use any type of stone because Applicant has not disclosed that using natural river stones provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a single blind hole having a single flexible elongate member inserted therein because any stone has heat capacity.

Regarding claim 3, Cook et al. in view of Hebranson and in further view of Lake disclose the claimed invention. The recitation of the method of attachment within the blind hole is

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interpreted as a recitation of method of manufacture. A recitation of method of manufacture must result in a structural feature that distinguished over the finished product of the prior art in order to be given patentable weight.

Regarding claims 6-8, Cook et al. in view of Hebranson and in further view of Lake disclose the claimed invention except for the explicit recitation of two and/or three stones. At the time of the invention, it would have been an obvious matter of design choice to one of ordinary skill in the art to use any number of stones because Applicant has not disclosed that using two or three stones provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a four stones because have heat capacity as well as the necessary acupressure rigidity.

Regarding claim 21, Cook et al. disclose the claimed invention, see elongate members 20 and 26 in figures 1-4.

### *Response to Amendment*

The examiner acknowledges the amendments made to the claims. New art has been applied.

***Response to Arguments***

Applicant's arguments with respect to claims 1-8 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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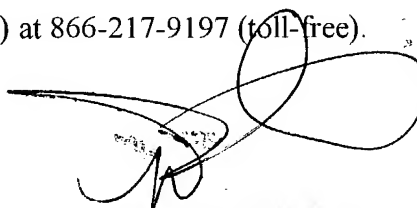
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*  
October 4, 2004



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